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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAJKO LJUTICA,

Plaintiff,

V.

ALBERTO R. GONZALES, U.S. Attorney General, MICHAEL CHERTOFF, Secretary, Department Homeland Security, EDUARDO AGUIRRE, Director, U.S. Citizenship and Immigration Services, ANDREA J. QUARANTILLO, Field Office Director, New York,

Defendants.

Electronically Filed

**DEFENDANTS' STATEMENT OF
MATERIAL FACTS PURSUANT
TO LOCAL CIVIL RULE 56.1**

07 Civ. 6129 (JSR)

Pursuant to Civil Rule 56.1 of the Local Rules of the United States District Court for the Southern District of New York, defendants Alberto R. Gonzales, Attorney General, Michael Chertoff, Secretary of the Department of Homeland Security, Dr. Emilio T. Gonzalez, Director, United States Citizenship and Immigration Services (“USCIS”),¹ and Andrea J. Quarantillo, Field Office Director, New York, by their attorney, Michael J. Garcia, the United States Attorney for the

¹Eduardo Aguirre, originally named as a defendant in this lawsuit, is no longer the Director of USCIS. Pursuant to Fed. R. Civ. P. 25(d), Dr. Emilio Gonzalez, the present Director, is automatically substituted for Mr. Aguirre as a defendant.

Southern District of New York, state that there is no genuine issue to be tried with respect to the following material facts:

1. By indictment filed on December 23, 1991, Ljutica was charged, along with co-defendant Jillian Nuttbrock, with conspiracy and attempted bank fraud, in violation of 18 U.S.C. § 371 and 18 U.S.C. §§ 1344 and 2. See Indictment, filed on December 23, 1991 (“Indictment”), attached as Exhibit F to the Declaration of Kristin L. Vassallo (“Vassallo Decl.”), at 1-3.

2. On May 26, 1993, Ljutica entered a plea agreement with the Government to plead guilty to count two of the indictment, attempted bank fraud, in satisfaction of the charges against him. See Plea Agreement, dated May 20, 1993, attached as Exhibit G to Vassallo Decl., at 1-4.

3. In the agreement, Ljutica stipulated that “an acceptable method of determining the ‘loss’ figure [under the federal Sentencing Guidelines] is \$475,025.25, the amount the defendants would have realized had the scheme charged in Count Two been successful.” Id. at 2.

4. On May 26, 1993, Ljutica entered a guilty plea to count two of the indictment, acknowledging that “[o]n April 24, 1990, [he] went to Manufacture[r]s Hanover and attempted to withdraw \$375,000 from an account which contained \$475,000, money [his] wife had transferred into it,” and that he “knew that this money had been fraudulently transferred to the account.” Transcript of Plea, dated May 26, 1993, attached as Exhibit H to Vassallo Decl., at 12.

5. On December 16, 1993, Ljutica was convicted upon his guilty plea, and sentenced by United States District Judge Shirley Wohl Kram to sixteen months in prison and two years of supervised release. See Judgment In a Criminal Case, dated December 16, 2003, attached as Exhibit E, at 1-5.

6. On March 28, 2005, Ljutica submitted an application to CIS to become a naturalized citizen of the United States, pursuant to INA §§ 310 and 316, 8 U.S.C. §§ 1421 & 1427. See Application for Naturalization, dated March 28, 2005, attached as Exhibit N to Vassallo Decl., at 1-10.

7. On September 18, 2006, the District Director of CIS's New York District issued an initial decision denying Ljutica's naturalization application on the ground that he had been convicted of an aggravated felony. See Decision, dated September 18, 2006, attached as Exhibit Q to Vassallo Decl., at 1-3.

8. On October 16, 2006, Ljutica filed a timely administrative appeal of CIS's decision by requesting an N-336 hearing. See Request for a Hearing on a Decision in Naturalization Proceedings, dated October 11, 2006, attached as Exhibit R to Vassallo Decl., at 1.

9. On March 9, 2007, the District Director issued a final decision confirming the initial denial of Ljutica's naturalization application, again finding that Ljutica's 1993 conviction constituted an aggravated felony and rendered him statutorily ineligible for naturalization. See Decision on Review of Denial of Naturalization Application, dated March 9, 2007, attached as Exhibit S, at 1-2.

Dated: New York, New York
September 17, 2007

Respectfully submitted,

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Attorney for Defendants

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